Denise Antolini
59-463 Alapiʻo Road
Pūpūkea, HI 96712
antolinid@gmail.com

To: blnr.testimony@hawaii.gov For BLNR Meeting on September 22, 2023

**Testimony on D-14**. Amend Prior Chairperson approval dated November 22, 2022, Regarding Issuance of Right-of-Entry to Joshua H. VanEmmerik for Removal of Shoreline Erosion Control Structure, Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-002: seaward of 002 and 003. The Amendment is to Extend the Right-of-Entry to September 30, 2023.

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

I am testifying **in support** of the Land Division's proposed ROE with the (a) deadline of September 30, 2023, and (b) hand tools only for removal (no use of machinery or staging on the beach); **in strong opposition** to the landowner's request (a) for any extension of time, and (b) for use of heavy machinery or staging on public land; and I am asking for additional **strict conditions** and penalties outlined below.

I am a long-time resident of Pūpūkea, Oʻahu. Before I lived in Pūpūkea mauka, I lived on Ke Nui Road with my family, and "our beach" was Kammies, the beach in front of the two properties that are the subject of the proposed ROE by the Land Division. My family has used and enjoyed Kammies for beach recreation activities for more than 30 years.

In August, I helped to organize three days of community beach clean-ups of the failed, loose and "expired black burritos" that have damaged Kammies, including the "burrito" materials in front of these two properties owned by Mr. VanEmmerik (the two brown-roofed houses overhanging the steeply eroded shoreline in these photos).

Our community effort pulled out four pick-up truckloads of deteriorated geotextile fabric from the shoreline that was impeding public access and polluting this spectacular beach. See: https://www.hawaiinewsnow.com/video/2023/08/05/north-shore-residents-roll-up-their-sleeves-clean-up-deteriorating-sand-burritos-beach/

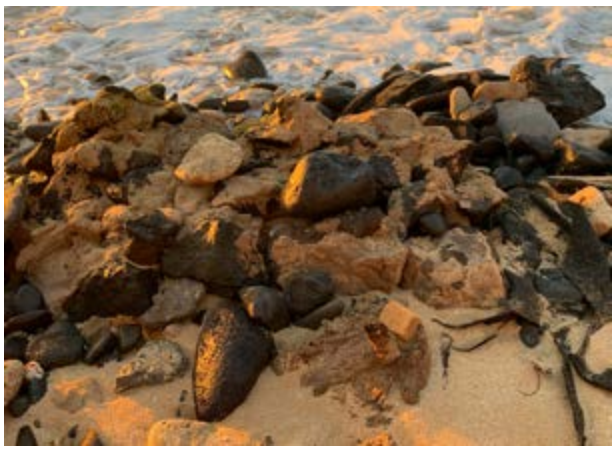
During these clean ups (August 1, 2, and 30), we encountered the massive illegal concrete "pour" by Mr. VanEmmerik, and the shocking under-layers of embedded (and loose) rocks, rusty wire and pipes, adhered sand, lumber, netting, rope, and other non-natural materials. Much of the material appears

deeply layered in the shoreline and not visible except when some areas are exposed by low tide or high surf, particularly during the past weeks of seasonal erosion.

For the past year, materials from the site have fallen into the surf zone and nearshore reef, including concrete, rocks, and sand bags. The damage to the public trust resources is obvious, and is the direct consequence of the illegal activity by this landowner and his failure to remove it all, as promised, immediately. Black burrito fabric litters the sand and ocean, dangerously wraps around the legs of beach users traversing the shoreline, rocks and rusted metal impede safe and full public use of this stretch, and have caused untold damage and pollution to the reef.

These underwater photos of a waterlogged sandbag and concrete aggregate chunk next to a broken coral head were taken by me in the shorebreak directly in front of these houses on August 30, 2023.

This photo below taken this week, on September 17, 2023 shows huge pile of rocks, concrete chunks, a rusty pipe (foreground), and debris littering the shoreline in front of these two houses.



By all accounts, the landowner, Joshua VanEmmerik, a resident of Kailua, purchased the properties in December 2021 with apparent knowledge of the highly eroded beachfront and illegality of beach burritos and hardening measures. He appears to maintain these two properties as vacation rentals.

To refresh the Board's memory about the egregious nature of Mr. VanEmmerik's blatant pouring of concrete and dumping of other materials onto the public beach, please watch these news stories:

https://www.kitv.com/news/local/controversy-over-concrete-some-angered-by-plastered-coast-on-oahus-north-shore-update/article_322aeba8-405d-11ed-8a7c-9f228d0fdc5b.html

https://www.hawaiinewsnow.com/2022/11/11/north-shore-property-owner-offers-take-down-concrete-barrier-poured-sunset-beach/

As a result of these illegal actions, OCCL brought an enforcement action against the landowner and the DLNR Chair approved a settlement allowing him until December 31, 2022 to remove the materials from the beach with hand tools. Mr. Van Emmerik failed to remove the materials. The ROE expired.

Without adequate justification and without penalty, in March 2023, DLNR extended this agreement to allow Mr. Van Emmerik more time to remove the materials, until September 30, 2023. He had all spring and summer to do the work, he failed to do so, and now has only 8 days remaining after this Board action -- all a pickle of his own making.

But this pickle significantly endangers public health, safety, and the environment. For a year, the illegally placed materials have posed a serious safety risk to the public, have damaged the beach (a public trust resource), have polluted the marine environment, and substantially interfered with lateral access along this beach.

To my knowledge, Mr. Van Emmerik has never been assessed or paid any penalty for this damage to public resources. There is no doubt that that Mr. Van Emmerik violated and flouted the law, and there is no doubt that he has not fulfilled his legal obligation to DLNR and the public to remove all materials in a timely manner. Yet, no consequences?

Therefore, the Board should approve the ROE with additional conditions and penalties as follows:

1. add a condition to require that the landowner to pay fees and costs for an independent marine engineering or coastal resources expert, hired immediately or in-house via OCCL, to observe and document, in detail, the removal of all materials by the landowner through September 30, 2023 and to prepare a report back to the Board by October 15, 2023 (made available to the public via a Board submittal or upon request), verifying that: (a) ALL non-natural materials have been removed in beach/shoreline in front of both houses, (b) ALL non-natural materials have been removed from the marine waters/reef fronting the houses out to 200 feet, (c) ONLY natural sand remains in the beach/shoreline; and (d) ALL pilfered or otherwise procured "stream or beach rocks" are returned to the nearby stream bed;

2. add a condition to prohibit work at night on the beach/in the shoreline (between the hours of 6 pm to 7 am) and prohibit any staging of materials or equipment on public property;

3. assess a penalty for encroachment on and damage to the public trust (beach, nearshore reef) for the past twelve months (since the illegal activity admittedly started a year ago in September 2022), at no less $1,000 per day (for a total of $365,000), with the penalty full paid within 30 days of Board action into the Beach Restoration Special Fund (HRS § 171-156); and

4. impose a non-negotiable penalty of $15,000 per day for every day beyond September 30, 2023 that any non-natural non-sand material remains in the shoreline in front of these houses or in the nearshore reef, based on the independent expert report, with the penalty full paid within 30 days of Board action into the Beach Restoration Special Fund (HRS §171-156).

Mahalo for protecting our public beaches!

Sincerely,

Denise Antolini

| | |
|---|---|
| **From:** | Sue Cortes |
| **To:** | DLNR.BLNR.Testimony |
| **Subject:** | [EXTERNAL] Testimony on D-14; Issuance of Right-of-entry to Joshua H. VanEmmerick I re: removal of illegally dumped boulders and poured cement on the beach slope makai of his beachfront property TMK (1) 5-9-002, 003 |
| **Date:** | Wednesday, September 20, 2023 6:06:59 PM |

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Aloha Chair Chang and members of the Board of Land and Natural Resources,

We am opposed to any extension of the September 30,2023 ROE. Joshua H. VanEmmerick has known of this deadline for a long time, not only has he done nothing to remove his illegally dumped material, he has done nothing to remove the large chunks of cement and boulders that have been washed into the ocean.

Where there was once a coral sea bottom, swimmers and divers now must look at Van Emmerick's rubble on the ocean floor and negotiate a safe path through it. We have lived on Ke Nui Road for close to 50 years and are appalled by this dangerous mess in our community.

Please make this guy remove his blight now.

Mahalo nui loa,

Jim Blattau and Sue Cortes

**From:** Karen Gallagher
**To:** DLNR.BLNR.Testimony
**Subject:** [EXTERNAL] D-14 VanEmmerik ROE
**Date:** Wednesday, September 20, 2023 6:51:07 PM

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ATTENTION DLNR ADMIN- Please disregard my previous statement and replace it with this one; the previous one had some inaccuracies.
Thank you!!!!!

Hi my name is Karen Gallagher. I am testifying in **support** of the Land Division's proposed ROE with the (a) deadline of September 30, 2023, and (b) hand tools only for removal (no use of machinery or staging on the beach); in strong **opposition** to the landowner's request (a) for any extension of time, and (b) for use of heavy machinery or staging on public land; and for additional **strict conditions** and penalties outlined below. I fully support Denise Antolini's testimony.

I am a second generation surfer and have lived my entire life either in the ocean or staring at it, and since 1979 that ocean has been the one surrounding the North Shore of O'ahu. I was fortunate enough to rent 59-147 A Ke Nui Road, which is one of the two houses subject to this ROE, from July 1981 until, I think, 1989. During that time period the sand would erode every summer to the naupaka just outside of our fence, creating a very steep slope about 20 feet high dropping off into the ocean. With the ending of summer the northeast wind swells, which caused the erosion, would cease. By latethe end of September or early October the large northwest and west swells would arrive, and the beach would quickly replenish itself, averaging maybe 30 yards wide.

I surfed there whenever it was good, snorkeled the calm ocean in the summers, and would bodysurf in the shore break when the waves were big. There were no rocks in that area until you got up towards the lifeguard tower where the river mouth is, so it was a very safe, sandy shoreline.

Now that shoreline is extremely hazardous. I walked it one day last spring with moderate surf and had to clamber over rocks that had been placed there, had torn pieces of old burritos wrap around my legs, some of which were floating away, I saw multiple busted open sand bags disintegrating, and had to tread carefully to avoid injury due to the semi-exposed jagged concrete which blends almost perfectly into the sand. This once pristine stretch of shoreline has been turned into a dangerous, ugly rubbish pit.

This summer I got involved with the Friends of Kammies and helped in two cleanup efforts to remove loose burritos before they broke off into the ocean, as many had already. The work was difficult, and dangerous. Besides the dangers of the disintegrating tarps was another danger; that concrete had been poured directly onto the sand and was reinforced with rebar and a web of thin wiring. The concrete is jagged and partially buried by sand, and has been undermined resulting in caverns and exposing rebar and wiring, creating an extremely dangerous situation for surfers and beach goers. During one of the mornings I stepped on one of the pieces of thin metal wiring that had broken off, and it was stuck in my foot.

I know that this situation really sucks for the homeowners. Many along this stretch have owned their homes for decades. The owner of my old rental home, however, only bought it recently, and was well aware of the recent erosion problems. He has blatantly broken the law, and seems to have no qualms regarding endangering the public, as his debris is on public lands, and occasionally ends up in the ocean. He has repeatedly been asked by DLNR to remove the concrete, and the burritos are also there past their permitted time. DLNR has threatened fines, which have not been enforced, and as such his criminal activity has not ceased. He arrogantly ignores each deadline, just as a child will disregard a parent who doesn't

follow through on threats would act. He has had ample time to clean up this mess.

As a lover of Kammies and as a single parent, I encourage the State to enforce the laws that are in place to protect our beaches from such egregious and dangerous violations. This criminal activity must be stopped before someone gets seriously injured and lawsuits ensue.

GOODSILL

Forest B. Jenkins
fjenkins@goodsill.com | (808) 547-5765

September 20, 2023

**VIA E-MAIL (**blnr.testimony@hawaii.gov)

Board of Land & Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

**RE: Amend Prior Chairperson Approval dated November 22, 2022 Regarding Issuance of Right-of-Entry to Joshua H. VanEmmerik for Removal of Shoreline Erosion Control Structure, Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-002: Seaward of 002 and 003**

Dear Board of Land and Natural Resources:

Our law firm represents Joshua H. VanEmmerik with respect to Notice of Alleged Violation OA 23-13 issued on September 30, 2022 ("NOV"). The NOV pertains to alleged unauthorized land uses within the Conservation District located at 59-147 and 59-147 A Ke Nui Road, Koolauloa, Oahu and identified as Tax Map Keys: (1) 5-9-002:002 & (1) 5-9-002:003 (the "Property"). The NOV cites the following alleged violations: (1) the October 28, 2021 alleged noncompliance regarding the permit conditions of Emergency CDUP OA 19-06 pertaining to the placement of temporary erosion control measures fronting the Property; and (2) the alleged use of concrete, paint, rebar, and potentially other materials in front of the Property.

On November 22, 2022, the Chair of the Board approved the issuance of a right of entry permit to remove a shoreline erosion control improvement fronting the Property. On or about July 7, 2023, we submitted a land disposition request to allow Mr. VanEmmerik to use heavy machinery to fully resolve the issues noted in the NOV. In response, OCCL staff has recommended that the right of entry permit be extended to September 30, 2023 subject to the condition that there be no use or staging of heavy equipment or vehicles on the State beach.

As described in detail below, Mr. VanEmmerik has expended a significant amount of resources in order to achieve substantial compliance and correct the alleged violations noted in the NOV. Mr. VanEmmerik remains fully committed to completely removing the structures fronting his Property and at this point believes he has reached substantial compliance. Through this written submittal, Mr. VanEmmerik respectfully requests that the Board extend the previously approved right of entry to **October 31,**

**2023**, subject to the same conditions allowing for manual labor and hand powered tools (i.e. jack hammers) previously approved. At this juncture, Mr. VanEmmerik respectfully withdraws his July 7, 2023 land disposition request to use heavy machinery (i.e. an excavator) in light of the current status of the removal project.

Mr. VanEmmerik has paid for several large crews to manually dig out and remove the structures, identified in the NOV, on at least three separate occasions and achieved considerable results. *Compare* Exhibit "1" (OCCL's 9/28/22 photograph attached in the NOV) *with* Exhibit "2" (9/15/23 photographs taken after three substantial removal projects). At this point, we believe that the burritos are fully removed and that the concrete has been substantially removed. However, if there are any undiscovered additional pieces or portions of structures buried deep beneath the sand fronting the Property, then the amended right of entry requested will provide Mr. VanEmmerik with the means and time needed to quickly remove any remaining objects. Accordingly, and in an abundance of caution, Mr. VanEmmerik respectfully requests that the right of entry be extended to October 31, 2023 (one month beyond what is being recommended by OCCL staff) to address any potential remaining issues needed to reach full compliance. [1]

***Background***

The NOV was issued on September 30, 2022. On October 26, 2022, Mr. VanEmmerik provided a written response to the NOV and agreed to remove the structures identified in the NOV. Mr. VanEmmerik did not wish to contest the issues with OCCL and instead worked to achieve full compliance by removing all structures, including the burritos installed by the prior owner. [2] Mr. VanEmmerik entered into a Settlement Terms and Agreement with OCCL on November 18, 2022 to remove the aforementioned structures. Mr. VanEmmerik signed an addendum to the settlement agreement which was provided to the State on May 17, 2023. *See* Exhibit "3". In an effort to keep OCCL informed of the sand migration and removal process, Mr. VanEmmerik provided weekly status letter updates mailed to OCCL from around

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[1] As the alleged structures are covered by a substantial amount of sand, extending the right of entry will allow Mr. VanEmmerik to immediately send a crew on-site to address any remaining portions of the structures that were potentially inadvertently missed in prior digging and removal projects. Mr. VanEmmerik will use the same contractor that was utilized in the December 2022 removal project for any future work that becomes apparent and necessary.

[2] Upon purchasing the Property, Mr. VanEmmerik inherited the temporary erosion control structures that initially were approved by the Board of Land and Natural Resources ("BLNR") in 2018. Nearly every home situated along this stretch of beach has similar structures. Mr. VanEmmerik agreed to take on the removal project and remove the burrito system installed by the prior owners.

February, 2023 through September, 2023 with photographs documenting the sand conditions.

To be clear, Mr. VanEmmerik has been very proactive in his removal efforts. In point of fact, Mr. VanEmmerik has already spent tens of thousands of dollars removing the aforementioned structures. The process of removal naturally involved digging deep into the heavy sand covering the structures, manual removal, and then manually transporting any materials off the beach. In furtherance of his goal to remove all structures, Mr. VanEmmerik paid multiple crews to perform digging and removal projects spanning multiple weeks at the Property in 2022 and 2023. Several of the larger removal projects include, but are not limited to the following:

- Mr. VanEmmerik hired a contractor and crew to remove the concrete structure in December, 2022 and provided proof of contractor retention on November 18, 2022. *See* Exhibit "4" (photographs documenting the December, 2022 removal project). In particular, and as confirmed in an email to the State, this crew worked full days on November 26, November 29, November 30, December 1, December 2, December 3, and December 5, 2022 to perform the removal. *See* Exhibit "5". This particular removal process was designed to remove all of the subject concrete. A site inspection took place on January 18, 2023 with OCCL and the State confirmed that the concrete portion had been removed. *See* Exhibit "6". A considerable amount of the soft erosion control structures (i.e. burritos) were also removed during this removal project as well.

- During the weeks of July 31 and August 7, 2023, Mr. VanEmmerik hired another crew of laborers to dig into the sand fronting the Property and to remove as much of the burrito structures as physically possible. The crew made substantial progress in clearing out the tarps that made up the burritos and dug down by hand as far as possible. *See* Exhibit "7" (photographs of the removal process during early August, 2023).

- In early to mid-September, 2023, Mr. VanEmmerik paid another larger crew of laborers to substantially complete the removal of the burritos and any other debris still remaining. These laborers started work at 3 a.m. to work at low tide and removed a substantial amount of the remaining tarps from the burrito system installed by the prior owner. *See* Exhibit "8" (photographs of the September, 2023 removal process). This particular crew also attempted to dig, search, and manually remove any remaining debris from the concrete removal.

Mr. VanEmmerik originally submitted his land disposition request on July, 7 2023 for use of an excavator or backhoe to assist with the digging necessary to complete the removal project and followed up on several occasions. *See* Exhibit "9". While this request was pending, Mr. VanEmmerik continued to pay laborers thousands of dollars a day to perform the removal project manually which, fortunately, made more progress than was originally anticipated. At this juncture, Mr. VanEmmerik believes that he has reached substantial compliance in correcting the issues identified in the NOV. If there are any materials undiscovered and/or missed through the manual digging and removal project, due to the consistently heavy sand coverage, then Mr. VanEmmerik will immediately have any exposed materials removed.

Mr. VanEmmerik does not wish to have this matter dragged out and wants to expeditiously reach full compliance. Extending the right of entry to October 31, 2023 will provide the time needed for Mr. VanEmmerik to address any areas that potentially went undetected beneath the sand during the manual efforts done to complete the removal project.

***Conclusion***

Simply looking down the stretch of beach where our client's property is located reveals that the vast majority of owners are not removing the burritos and other structures fronting their property. As the Board is aware, there are many pending enforcement actions that will likely lead to numerous contested cases in the future. Rather than request a contested case, Mr. VanEmmerik has had three large crews perform extensive manual digging and removal projects — at his personal expense in the tens of thousands of dollars — in an effort to fully comply with OCCL's demands and address the NOV. Our office transmitted weekly letters to OCCL to inform staff of the sand migration, status of the removal, and provide photographs of the heavy sand covering the burrito structures. Since receiving the NOV, Mr. VanEmmerik has demonstrated his sincere desire to work with OCCL and achieve full compliance.

In conclusion, Mr. VanEmmerik respectfully requests that the right of entry be extended until October 31, 2023 to allow for any final removal efforts that may become necessary. Mr. VanEmmerik will meet with OCCL to perform a site inspection within the next two weeks. If there are any remaining areas of concern, then he will immediately address any potential issues raised by OCCL in the upcoming inspection. We greatly appreciate the Board's time and attention on this matter. Thank you.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Jason M. Tani
Edmund K. Saffery
Forest B. Jenkins

Enclosures

***Exhibit 3: OCCL Staff Photo Taken 9/28/2022***

EXHIBIT 2

**Cosgrove, Todd T.**

**From:** Jenkins, Forest B.
**Sent:** Wednesday, May 17, 2023 7:24 PM
**To:** Steed, Miranda C
**Subject:** RE: VanEmmerik Addendum
**Attachments:** 2023-03-29 Settlement Agreement Addendum (VanEmmerik).pdf

Thanks Miranda. That was my interpretation as well, but I just wanted to clarify that we were interpreting the addendum in the same manner. Here is the signed addendum. Thanks again.


Forest B. Jenkins

GOODSILL

Goodsill Anderson Quinn & Stifel
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**From:** Steed, Miranda C <miranda.c.steed@hawaii.gov>
**Sent:** Monday, May 15, 2023 9:46 AM
**To:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Subject:** RE: VanEmmerik Addendum

Caution: external email

Hi Forest,

Yes. I think we are on the same page. If you'd like to amend and send a redline that's fine too. My understanding is that I'm getting a report once a week but he's got someone checking on the sand twice a week. I also understand work done to include checking if it's feasible to begin removal. I am hopeful that he will be able to begin removal of the burritos soon now that we're getting into the summer months. Let know if you want to discuss further or send a redline.


Miranda C. Steed
Deputy Attorney General
Land Division
Ka 'Oihana o Ka Loio Kuhina
465 South King Street, Suite 300
Honolulu, Hawaii 96813
E Mail: miranda.c.steed@hawaii.gov


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**From:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Sent:** Saturday, May 13, 2023 6:55 PM

**To:** Steed, Miranda C <miranda.c.steed@hawaii.gov>
**Subject:** [EXTERNAL] VanEmmerik Addendum

Hey Miranda:

I just wanted to clarify re: the addendum. It's my understanding that the addendum contemplates one weekly update with two photographs and basic status updates re: sand condition and if any work was done, etc. Is that your understanding? I see the addendum states "VanEmmerik will provide an update on work done to remove the alleged unauthorized structures twice a week in writing". I just wanted to make sure that this meant one update with two photos and a brief summary. Just wanted to double check as two separate updates seems a bit duplicative and cumbersome. Thanks. Assuming this is your interpretation then I think I can get that executed addendum to you soon. I'm available next week to discuss. Thanks.

Forest B. Jenkins

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Addendum to Settlement Terms and Agreement

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), through its Administrator, Michael Cain, and through Chairperson Dawn N.S. Chang of the Board of Land and Natural Resources, hereby agree to the following addendum to the settlement agreement (dated November 18, 2022) regarding alleged violation(s) for unauthorized land uses within the Conservation District against JOSHUA H. VANEMMERIK ("Mr. VanEmmerik"), OCCL enforcement file ENF: OA 23-13, subject to completion of the following conditions:

(1) Mr. VanEmmerik will remove all alleged unauthorized structures as noted in the Notice of Alleged Violation under "September 30, 2022-Alleged Unauthorized Activity", attached as **Exhibit 1**, by September 30, 2023 notwithstanding force majeure, defined herein to mean an unforeseen and unanticipated natural disaster, which does not include anticipated seasonal coastal and/or tidal changes;
(2) Mr. VanEmmerik will provide an update on work done to remove the alleged unauthorized structures twice a week in writing via email to the Department of the Attorney General and in writing via email and postal mail to OCCL;
(3) The reports in condition (2) must include: (1) a summary of what work was conducted, or if no work was conducted, an explanation of why conditions rendered work unfeasible; and (2) photos of the area where unauthorized structures exist with date and time stamps;
(4) OCCL will conduct an inspection of 59-147 & 59-147 A Ke Nui Road Por. Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, Tax Map Keys: (1) 5-9-002:002 & (1) 5-9-002:003 (seaward) by October 31, 2023 to ensure all unauthorized structures as alleged in condition (1) have been removed; and
(5) If Mr. VanEmmerik fails to remove all alleged unauthorized structures as noted in the Notice of Alleged Violation, dated Sep 30, 2022, attached as **Exhibit 1**, by September 30, 2023 notwithstanding force majeure, this addendum and underlying agreement attached as **Exhibit 2** will be considered null and void.

IT IS UNDERSTOOD AND AGREED that the State of Hawaii is not responsible for the costs incurred by Mr. VanEmmerik to remove the alleged unauthorized structures as alleged in **Exhibit 1**.

IT IS UNDERSTOOD AND AGREED that this Agreement shall not exempt Mr. VanEmmerik from future fines or enforcement actions for his failure to remove the

alleged unauthorized structures and encroachments by September 30, 2023, or any future violations.

IT IS UNDERSTOOD AND AGREED that failure to remove all of the alleged unauthorized structures and encroachments by September 30, 2023 and/or comply with this agreement will result in an OCCL staff recommendation to the Board of Land and Natural Resources to impose fines for ENF: OA 23-13 and mandate removal of any remaining alleged unauthorized structures and encroachments.

IT IS UNDERSTOOD AND AGREED that Mr. VanEmmerik's compliance with this agreement will result in OCCL closing the enforcement file for ENF: OA-23-13 against Mr. VanEmmerik and will not go before the Board of Land and Natural Resources for any enforcement related action on the above referenced case.

IT IS UNDERSTOOD AND AGREED that the final decision of whether to impose fines rests with the Board of Land and Natural Resources and must be decided during a meeting subject the Haw. Rev. Stat. chapter 92.

Dated: Honolulu, Hawaii, _____, 2023.

APPROVED AS TO FORM:

_____
JOSHUA H. VANEMMERIK

_____
FOREST B. JENKINS
Attorney for Mr. VanEmmerik

_____
DAWN N.S. CHANG
Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

_____
MICHAEL CAIN
Administrator
Department of Land and Natural

_____
MIRANDA C. STEED
Deputy Attorney General

Resources, Office of Conservation
and Coastal Lands

EXHIBIT 4

**Cosgrove, Todd T.**

**From:** Jenkins, Forest B.
**Sent:** Wednesday, January 25, 2023 4:06 PM
**To:** Steed, Miranda C
**Subject:** VanEmmerick Re: Photos of Removal
**Attachments:** Attachments.html

Hey Miranda:

Hope you're having a good week. Pursuant to our prior discussion, I'm writing to provide a secure link to eleven photographs depicting the removal project. As I understand it, the removal project was performed on the following dates: Nov. 26; Nov. 29; Nov. 30; Dec. 1; Dec. 2; Dec. 3; and Dec. 5. The photographs depict the crew removing the structure fronting the property from beginning to end. As you can see the removal utilized had tools and broke the structure down into pieces that could be transported across the property. The project utilized safety precautions to avoid disruption on the beach and contained any debris by putting up appropriate safety devises (also shown in the photographs). Please let me know if you have any issues accessing the photographs. Thanks.

Forest B. Jenkins

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**Cosgrove, Todd T.**

**From:** Steed, Miranda C <miranda.c.steed@hawaii.gov>
**Sent:** Thursday, April 13, 2023 5:28 PM
**To:** Jenkins, Forest B.
**Subject:** Re: VanEmmerik

Caution: external email

Hi Forest,

Yes, we're in agreement that the concrete has been removed. Can talk about this tomorrow as well if you want.

Miranda

---

**From:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Sent:** Thursday, April 13, 2023 3:45:35 PM
**To:** Steed, Miranda C <miranda.c.steed@hawaii.gov>
**Subject:** [EXTERNAL] RE: VanEmmerik
Miranda:
It's my understanding that the addendum referenced the alleged unauthorized structures in the 9/30/22 letter. I believe we've reached a general agreement that the cement has been removed. I just wanted to clarify that the remaining issues contemplated in the addendum refer to the buried burritos between the home and the ocean. Just wanted to clarify – in an abundance of caution -- that there isn't anything else that I'm missing or that could be covered and subject for removal. I'll get a response to you asap and apologize for the delay.

Forest B. Jenkins

GOODSILL

Goodsill Anderson Quinn & Stifel
A Limited Liability Law Partnership LLP
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**P.** (808) 547-5765 | **F.** (808) 441-1221
**E.** fjenkins@goodsill.com | www.goodsill.com
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**From:** Steed, Miranda C <miranda.c.steed@hawaii.gov>
**Sent:** Thursday, March 30, 2023 9:51 AM
**To:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Subject:** VanEmmerik
Caution: external email

Hi Forest,
Here's the addendum for the settlement agreement. Please let know if you have any revisions/questions. Thanks for your patience!
Miranda C. Steed
Deputy Attorney General
Land Division
Ka 'Oihana o Ka Loio Kuhina

465 South King Street, Suite 300
Honolulu, Hawaii 96813
E Mail: miranda.c.steed@hawaii.gov

EXHIBIT 7

EXHIBIT 8

AHOLELEI
45
Cougars
WH
CAUTION
ULTRA-LOW
SULFUR DIESEL
FUEL ONLY

**Cosgrove, Todd T.**

**From:** Jenkins, Forest B.
**Sent:** Thursday, July 13, 2023 9:33 AM
**To:** Cheung, Barry W
**Cc:** Steed, Miranda C; Fitzpatrick, Trevor J
**Subject:** RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Thank you Barry. I appreciate your assistance and we are happy to get you anything else that you need. Have a good day.


Forest B. Jenkins

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---

**From:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Sent:** Thursday, July 13, 2023 9:31 AM
**To:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Cc:** Steed, Miranda C <miranda.c.steed@hawaii.gov>; Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
**Subject:** RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Caution: external email

I got your email. We will respond. Thanks.

---

**From:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Sent:** Thursday, July 13, 2023 9:26 AM
**To:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Cc:** Steed, Miranda C <miranda.c.steed@hawaii.gov>; Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
**Subject:** [EXTERNAL] RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Hey Barry:

Hope you're doing well. I just wanted to follow up on the requested land disposition for the VanEmmerik matter and to inquire if you need anything else from my end. We're motivated to get the project fully completed as soon as possible. I appreciate it.

Forest B. Jenkins

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---

**From:** Jenkins, Forest B.
**Sent:** Friday, July 7, 2023 9:39 AM
**To:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Cc:** miranda.c.steed@hawaii.gov; Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
**Subject:** RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Good morning Barry:

I hope that this email finds you well. I am writing to submit a land disposition request for the VanEmmerik property to remove the remaining soft erosion control structures (i.e. burritos) fronting the property. I've attached a copy of the settlement agreement which should provide you with more information. The structures subject to removal are very large and heavy and a certain amount of machinery will be necessary to perform the removal project. Please let me know if you have any questions or concerns, or if you need anything else from me. Thanks.

Forest B. Jenkins

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---

**From:** Jenkins, Forest B.
**Sent:** Tuesday, November 1, 2022 4:09 PM
**To:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Cc:** Mills, Kimberly T <kimberly.mills@hawaii.gov>; miranda.c.steed@hawaii.gov
**Subject:** RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Barry, Miranda, and Tiger:

Sorry I am resending the email with an updated email for Miranda. Sorry I believe I had the wrong email address in the prior email. Thanks.


Forest B. Jenkins

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---

**From:** Jenkins, Forest B.
**Sent:** Tuesday, November 1, 2022 3:47 PM
**To:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Cc:** Mills, Kimberly T <kimberly.mills@hawaii.gov>; miranda.steed@hawaii.gov
**Subject:** RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Good afternoon Barry:

Here is the application for the right of entry and land disposition. Please let me know if you'd like to discuss the proposed removal project in greater detail or if there are any areas that I should revise/supplement. Also, please let me know if you need anything else from me at this time. I appreciate your assistance with the application.


Forest B. Jenkins

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---

**From:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Sent:** Tuesday, November 1, 2022 7:49 AM
**To:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Cc:** Mills, Kimberly T <kimberly.mills@hawaii.gov>
**Subject:** RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Caution: external email

Sure. Let me know when you want to chat.

Barry

---

**From:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Sent:** Monday, October 31, 2022 6:26 PM
**To:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Cc:** Mills, Kimberly T <kimberly.mills@hawaii.gov>
**Subject:** [EXTERNAL] RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Thanks again Barry for sending me the application. We are nearly done filling out the application. I may have a few questions regarding a few of the areas in the application. Could I call you with a couple of questions this week? Have a pleasant evening.


Forest B. Jenkins

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---

**From:** Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Sent:** Thursday, October 27, 2022 7:03 PM
**To:** Jenkins, Forest B. <fjenkins@goodsill.com>; Cain, Michael <michael.cain@hawaii.gov>; Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>; Mills, Kimberly T <kimberly.mills@hawaii.gov>
**Cc:** Saffery, Edmund K. <esaffery@goodsill.com>; Tani, Jason M. <jtani@goodsill.com>; Cain, Michael <michael.cain@hawaii.gov>; Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>; Mills, Kimberly T <kimberly.mills@hawaii.gov>; Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
**Subject:** RE: Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Caution: external email

Mr. Jenkins
I was told to forward you an application form for the use of State lands. Please also provide detail information on the proposed removal plan on your application. Thanks.

Barry

---

**From:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Sent:** Wednesday, October 26, 2022 4:03 PM
**To:** Cain, Michael <michael.cain@hawaii.gov>; Case, Suzanne D <suzanne.case@hawaii.gov>; DLNR.CO.PublicDLNR

<dlnr@hawaii.gov>; Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>; Cheung, Barry W <barry.w.cheung@hawaii.gov>; Mills, Kimberly T <kimberly.mills@hawaii.gov>
**Cc:** Saffery, Edmund K. <esaffery@goodsill.com>; Tani, Jason M. <jtani@goodsill.com>
**Subject:** [EXTERNAL] Re: Joshua H. VanEmmerik; Notice of Alleged Violation, ENF: OA 23-13

Good afternoon:

As you know, our law firm represents Joshua H. VanEmmerik. Please find our attached letter in response to OCCL's October 20, 2022 correspondence. Please let us know if we can provide you with any additional information. Thank you very much.


Forest B. Jenkins

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**Cosgrove, Todd T.**

**From:** Jenkins, Forest B.
**Sent:** Thursday, August 24, 2023 11:50 AM
**To:** Fitzpatrick, Trevor J; Steed, Miranda C; Cheung, Barry W
**Cc:** Reed, Thomas J.; Anderson, Rebecca L; Hirokawa, Ian C; Cain, Michael
**Subject:** RE: VanEmmerik

Ok, thanks Trevor. I'll pass along your message to my client. It sounds like we'll be able to move forward when we get the land disposition.

Barry, is there any indication when we'll get the land disposition processed? We are ready to get this project completed and remove the structure. An excavator is necessary to do the digging. Thanks.


Forest B. Jenkins

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---

**From:** Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>
**Sent:** Thursday, August 24, 2023 10:58 AM
**To:** Jenkins, Forest B. <fjenkins@goodsill.com>; Steed, Miranda C <miranda.c.steed@hawaii.gov>; Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Cc:** Reed, Thomas J. <treed@goodsill.com>; Anderson, Rebecca L <rebecca.l.anderson@hawaii.gov>; Hirokawa, Ian C <ian.c.hirokawa@hawaii.gov>; Cain, Michael <michael.cain@hawaii.gov>
**Subject:** RE: VanEmmerik

Caution: external email

Morning Mr. Jenkins –

Thanks for your email.

It does not appear OCCL will require any authorizations for removal activities other than that your client and their agents adhere to the settlement agreement and its addendum.

Whether or not machinery will be possibly allowed on the public beach/State-owned submerged lands would appear to be covered under your land disposition request.

If you have further questions regarding the land disposition, please contact Oahu Division Land Office (ODLO – (808) 587-0433).

Additionally, OCCL continues to receive complaints regarding debris being exposed in the shoreline area fronting your client's properties.

Your client may want to consider continuing to remove these materials by hand as they become exposed.

Regards,

Trevor Fitzpatrick
**Staff Planner**
**State of Hawai`i**
**Department of Land and Natural Resources**
**Office of Conservation And Coastal Lands**
**P.O. Box 621**
**Honolulu, Hawai`i 96809**
**www.dlnr.hawaii.gov/occl**

---

**From:** Jenkins, Forest B. <fjenkins@goodsill.com>
**Sent:** Friday, August 18, 2023 2:05 PM
**To:** Steed, Miranda C <miranda.c.steed@hawaii.gov>; Fitzpatrick, Trevor J <trevor.j.fitzpatrick@hawaii.gov>; Cheung, Barry W <barry.w.cheung@hawaii.gov>
**Cc:** Reed, Thomas J. <treed@goodsill.com>
**Subject:** [EXTERNAL] RE: VanEmmerik

Hey Miranda and Trevor:

Here are the photos of the beachfront taken on Monday at 10:31 a.m. and Thursday at 1:45 p.m. this week. The extensive hand removal that has taken place thus far is outlined in the below email and attached August 8, 2023 email. We would like to take out the remaining materials for OCCL as soon as possible. It sounds like we only will need an excavator for one day to finish the entire removal project and to reach full compliance. Please let us know if you need anything else from us for the authorizations. We are more than happy to follow any environmental and/or safety precautions that OCCL recommends in performing the necessary work to reach full compliance.

I'll ask Tom from my office to mail over hard copies of the email and color photographs.

Enjoy the weekend. Thanks.

Forest B. Jenkins

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A Limited Liability Law Partnership LLP
999 Bishop Street, Suite 1600 | Honolulu, Hawaii 96813

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---

**From:** Jenkins, Forest B.
**Sent:** Sunday, August 13, 2023 2:23 PM
**To:** Steed, Miranda C <miranda.c.steed@hawaii.gov>
**Cc:** Reed, Thomas J. <treed@goodsill.com>
**Subject:** RE: VanEmmerik

Just a quick update. Josh spoke with his contractor. We're all ready to go with approval. With the excavator we can get everything out in one day. It is impossible without the excavator. Thanks!

Forest B. Jenkins

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---

**From:** Jenkins, Forest B.
**Sent:** Sunday, August 13, 2023 1:57 PM
**To:** Steed, Miranda C <miranda.c.steed@hawaii.gov>
**Cc:** Reed, Thomas J. <treed@goodsill.com>
**Subject:** VanEmmerik

Hey Miranda:

Here are photos from Tue/Wen. afternoon around noon. The tarps have been cleared out in front of TMK 1590020030000. Machinery is necessary to complete the removal project. Josh really wants to perform the full removal asap and reach full compliance. Can he please use the requisite excavator to finish the removal and comply with the deadline? Upon confirmation that we can use machinery, we'll get everything pulled out and finished for OCCL. Thanks.

Tom, please mail this to OCCL. Thanks.

Forest B. Jenkins

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| | |
|---|---|
| **From:** | chip hartman |
| **To:** | DLNR.BLNR.Testimony |
| **Subject:** | [EXTERNAL] Testimony on D-14, meeting date: Sept.22,2023 |
| **Date:** | Thursday, September 21, 2023 8:41:38 AM |

---

To: blnr.testimony@hawaii.gov Meeting date: September 22, 2023

**Testimony on D-14**. Amend Prior Chairperson approval dated November 22, 2022, Regarding Issuance of Right-of-Entry to Joshua H. VanEmmerik for Removal of Shoreline Erosion Control Structure, Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-002: seaward of 002 and 003. The Amendment is to Extend the Right-of-Entry to September 30, 2023.

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

We are testifying in **support** of the Land Division's proposed ROE with the (a) deadline of September 30, 2023, and (b) hand tools only for removal (no use of machinery or staging on the beach); in strong **opposition** to the landowner's request (a) for any extension of time, and (b) for use of heavy machinery or staging on public land; and for additional **strict conditions** and penalties as outlined in the testimony of Denise Antoline.

When we walk the shoreline and swim the area fronting Mr. VanEmmerick's beach house, as well as his neighbor's, we are dodging thick black fabric which has washed onto the beach as well as into the ocean. The concrete Mr. VanEmmerik had poured on the sandy slope is now starting to crumble with re-bar and more black fabric exposed. Chunks of concrete mixed with pieces of iron washing onto the beach in the near future will not be welcome by beach users and water safety personnel patrolling the area. The sooner this potential hazard is removed the better. Mahalo.

Respectively submitted:
Chip and Mari Hartman
59-208 B Kamehameha Hwy.
Haleiwa, HI 96712

| | |
|---|---|
| **From:** | Amy Perruso |
| **To:** | DLNR.BLNR.Testimony |
| **Subject:** | [EXTERNAL] Meeting date: September 22, 2023 (Testimony on D-14) |
| **Date:** | Wednesday, September 20, 2023 8:42:43 PM |

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**Testimony on D-14**. Amend Prior Chairperson approval dated November 22, 2022, Regarding Issuance of Right-of-Entry to Joshua H. VanEmmerik for Removal of Shoreline Erosion Control Structure, Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-002: seaward of 002 and 003. The Amendment is to Extend the Right-of-Entry to September 30, 2023.

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

We are testifying in **support** of the Land Division's proposed ROE with the (a) deadline of September 30, 2023, and (b) hand tools only for removal (no use of machinery or staging on the beach); in strong **opposition** to the landowner's request (a) for any extension of time, and (b) for use of heavy machinery or staging on public land; and for additional **strict conditions** and penalties as outlined in the testimony of Denise Antolini.

Mahalo,

Amy Perruso
Jamie Sabatini
Kimiyo Dougherty
Jacinda Seale

Surfrider Foundation O‘ahu Chapter
P.O. Box 283092
Honolulu, HI 96828

**September 20, 2023**

ATTN:
Dawn N.S. Chang
Chairperson
Board of Land and Natural Resources

**Testimony on D-14. Amend Prior Chairperson approval dated November 22, 2022, Regarding Issuance of Right-of-Entry to Joshua H. VanEmmerik for Removal of Shoreline Erosion Control Structure, Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-002: seaward of 002 and 003. The Amendment is to Extend the Right-of-Entry to September 30, 2023.**

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

On behalf of the Surfrider Foundation, I am testifying in **support** of the Land Division's proposed ROE with the (a) deadline of September 30, 2023, and (b) hand tools only for removal (no use of machinery or staging on the beach); and for additional **strict conditions** and penalties outlined below.

In addition, Surfrider Foundation is in strong **opposition** to the landowner's request (a) for any extension of time, and (b) for use of heavy machinery or staging on public land.

Surfrider Foundation is a grassroots, non-profit environmental organization dedicated to the protection and enjoyment of our ocean, waves, and beaches. We have a local chapter on the island of O‘ahu that has been advocating for the protection of the public beaches along the North Shore. We have been dismayed at the ability of private homeowners to take actions that directly, and negatively, impact the public beach. We have a number of members, supporters, and volunteers who routinely utilize the North Shore beaches and coastline, including the beach and surf break fronting the properties that are the subject of the proposed ROE by the Land Division.

As described by our partners and fellow community members on the North Shore, the damage to the public trust resources by Mr. VanEmmerik‘s actions in the public shoreline are obvious, and is the direct consequence of the illegal activity by this landowner and his failure to remove the illegal shoreline structures, as promised, immediately. For a year, the illegally placed materials have posed a serious safety risk to the public, have damaged the beach (a public trust resource), have polluted the marine environment, and substantially interfered with lateral access along this beach.

To our knowledge, Mr. Van Emmerik has never been assessed or paid any penalty for this damage to public resources. There is no doubt that Mr. Van Emmerik violated and flouted the law, and there is no doubt that he has not fulfilled his legal obligation to DLNR and the public to remove all materials in a timely manner. Yet while the public shoreline and environment have suffered, Mr. VanEmmerik has faced no consequences for his actions.

Surfrider Foundation therefore requests that the Board approve the ROE with additional conditions and penalties as follows:

1. add a condition to require that the landowner to pay fees and costs for an independent marine engineering or coastal resources expert, hired immediately or in-house via

OCCL, to observe and document, in detail, the removal of all materials by the landowner through September 30, 2023 and to prepare a report back to the Board by October 15, 2023 (made available to the public via a Board submittal or upon request), verifying that: (a) ALL non-natural materials have been removed in beach/shoreline in front of both houses, (b) ALL non-natural materials have been removed from the marine waters/reef fronting the houses out to 200 feet, (c) ONLY natural sand remains in the beach/shoreline; and (d) ALL pilfered or otherwise procured "stream or beach rocks" are returned to the nearby stream bed;

2. add a condition to prohibit work at night on the beach/in the shoreline (between the hours of 6 pm to 7 am) and prohibit any staging of materials or equipment on public property;
3. assess a penalty for encroachment on and damage to the public trust (beach, nearshore reef) for the past twelve months (since the illegal activity admittedly started a year ago in September 2022), at no less $1,000 per day (for a total of $365,000), with the penalty full paid within 30 days of Board action into the Beach Restoration Special Fund (HRS §171-156); and
4. impose a non-negotiable penalty of $15,000 per day for every day beyond September 30, 2023 that any non-natural non-sand material remains in the shoreline in front of these houses or in the nearshore reef, based on the independent expert report, with the penalty full paid within 30 days of Board action into the Beach Restoration Special Fund (HRS §171-156).

Mahalo for your consideration.

Sincerely,

Lauren Blickley
Hawai'i Regional Manager
Surfrider Foundation